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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,853	03/08/2004	Aaron Gorga	10759-00175	2447
7590 Patrick W. Rasche Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louis, MO 63102				
02/25/2008				
EXAMINER				
WEAVER, SUE A				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
02/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/796,853

**Applicant(s)**

GORGAN ET AL.

**Examiner**

Sue A. Weaver

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 and 9-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7 and 9-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Besides not having any structure to pivot on at least two axes it is noted that no connection has been set forth between the pole and luggage. Even though the handle is connected to the pole it is set forth as an isolated element and without any orientation to the wheels to permit the handle to assume the position in the retracted state as is being claimed.

2. Claims 1-7 and 9-29 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Lu '055 and Lu '053 in view of Chang '146, all of record, or Chang '662.

3. The handle of Lu has three pivot axes in that runs through member 5, one at the pivot pin 211 of member 3 which is parallel to the one through member 4 and a perpendicular axis through member 2, as claimed in claims 2, 3, 10, 11, 13, 14, 26 and 27. Figure 5 of Lu shows the generally parallel relationship between the intermediate arm and grip which also permits the grip to assume the parallel relationship with the luggage top. Members 212 permit the handle to assume the perpendicular relationship with the wheel axis.

To have provided a recess in the top face to secure the pivoting handle with the major dimension optionally oriented perpendicular to the rear face and axis of the wheels would have been obvious in view of such teaching by Chang at 13...

4. Claims 1-6, 28 and 29, insofar as they are complete are rejected under 35 U.S.C. 103(a) as being unpatentable over Lin et al '089 in view of either Chang '146, both of record, or Chang '662.

Lin et al teach the provision of a towing handle on a telescoping arm which has two pivot axes one through 210D and one perpendicular through 40, as claimed. To have provided a recess in the top surface of the case to receive the handle in the retracted position such that it lies perpendicular to the axis of rotation of the wheels would have been obvious in view of the teaching by Chang at 13.

5. The declaration filed on 5/15/07 under 37 CFR 1.132 has been considered but is ineffective to overcome the Lu reference. Applicants have failed to establish an nexus between the current claims and the evidence submitted, that being the orientation of the grip portion when the handle is fully retracted and also the three pivot axes.

6. Applicant's arguments filed 11/29/07 have been fully considered but they are not persuasive. Applicants argue Lin et al '109 when the rejection used in et al '089. Moreover the discussion in paragraph 36 is directed to handle position for walking beside the luggage. Lin et al clearly teach perpendicular axes as shown in Figures 2 and 3 and the handle is capable of the retracted orientation claimed and as taught by Chang at 13 where the handle can be either parallel or perpendicular in orientation.

7. Claim 8 as been canceled.

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8. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

**Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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Art Unit: 3781

Typed or printed name of person signing this certificate:

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I hereby certify that this correspondence is being facsimile transmitted to the  
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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5:30-4).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor is Anthony Stashick\_. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*/Sue A. Weaver/*

Primary Examiner, Art Unit 3781